IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.MC.No. 1407 of 2004(A)

CC.458/2002 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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PETITIONER: ACCUSED:

RUBY PAULOSE, PARTNER, MARIA CEMENTS,
TRIPUNITHURA, ERNAKULAM.

BY ADV. SRI.JOSE KURIAKOSE (VILANGATTIL)

RESPONDENTS: COMPLAINANT & STATE:

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1. SAURASHTRA CEMENTS LTD.,
4TH FLOOR, G.C.D.A. SHOPPING COMPLEX,
MARIANE DRIVE, COCHIN-31, REP. BY POWER OF
ATTORNEY HOLDER MR. RAJESH (ASST.MARKETING
MANAGER).

2. STATE OF KERALA, REP.BY PUBLIC
PROSECUTOR, ERNAKULAM.

BY ADV. SRI.V.J.MATHEW
SRI.RAJESH PAUL
SRI.ASHLY ANTONY
SRI.BIJISH B.TOM
SMT.BABY SONIA
SMT.NAVEENA ANTONY

R2 BY PUBLIC PROSECUTOR RI. C.M.KAMMAPPU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 9/08/2007, THE COURT ON THE SAME DAY DELIVERED FOLLOWING:

K. HEMA, J.

Crl.M.C.No. 1407 of 2004

Dated this the 9th day of August, 2007

ORDER

A complaint was filed alleging that the accused purchased cement from the complainant on various dates under various bills and towards outstanding dues, the accused "issued" cheque, which, on presentation, was dishonoured, as there was no sufficient fund in the account of the accused. The accused did not pay the amount, inspite of notice issued and compliant is filed alleging offence under section 138 of the N.I. Act. The petitioner is the third accused in the complaint.

2. Learned counsel appearing for petitioner, vehemently argued that the 3rd accused is a lady and the allegations in the compliant do not constitute requirements under section 141 of the N.I. Act. It is submitted that no allegations are made in the complaint that the petitioner was in charge of and responsible for the conduct of the business of the company and hence she cannot be made liable for offence under section 138 of the Act.

3. The petitioner has produced copy of the complaint. No other

documents are produced. The cheque is not before the court. Though the respondents' counsel would point out that the chief-examination of complainant is over by filing a proof affidavit, copy of the proof affidavit is also not produced. On going through the allegations in the complaint, particularly the second paragraph, it is seen that the accused purchased articles from the complainant and the accused issued cheque towards the outstanding dues and that the cheque on presentation was dishonoured etc. The complaint only refers to "accused".

4. The petitioner was not able to establish that the said expression "accused" does not refer to petitioner. There is nothing before this Court to enter a finding that paragraph 2 of the complaint is not referred to petitioner herein and hence it cannot be said that she is not liable for offence under section 138 of the Act. On a reading of the complaint, the question of liability under section 141 of the N.I. Act is not seen alleged. There is no case for the complainant that any company has drawn the cheque on the account maintained by the company and that the other persons who are accused of the offences liable for the offence by virtue of Section 141 of N.I. Act. In such circumstances, it appears from the allegations made in the compliant that the accused referred to in the complaint has drawn the

cheque on the account maintained by the accused and on presentation of the cheque, it was dishonoured for "funds insufficient" and despite the notice, no amount was paid etc. On going through section 138 of the Act, such allegations in the complaint prima facie constitute offence under section 138 of the N.I. Act.

5. It is pointed by learned counsel for respondent that trial has already commenced and the case is posted for cross-examination of the complainant. If the petitioner has a case that she was dragged to the court only as a partner of firm, this fact can be brought to the notice of the court at the appropriate stage. But so long as no documents are produced before this Court to show that petitioner has not independently issued the cheque, as alleged in paragraph 2 of the complaint, it is difficult to hold at this stage that no offence is made out against petitioner. It will appear from the allegations in the complaint that complaint is not fastening liability under section 141 of the N.I. Act. Therefore, the arguments raised under section 141 of the N.I. Act do not arise at present, but it is left open to the petitioner to raise such contentions before the trial court at the appropriate stage.

This case is pending before the trial court since 2002 onwards. This petition is filed in the year 2004. The petitioner has sufficient time to produce necessary documents or evidence to convince the

court that the case falls under section 141 of the N.I. Act and that the requirements are not made out, as revealed from the allegations made in the complaint etc. This was not done.

This petition is dismissed.

K. HEMA, JUDGE.

Krs.